Filed 8/19/13 A.B. v. Superior Court CA4/2

**NOT TO BE PUBLISHED IN OFFICIAL REPORTS**



**IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA**

**FOURTH APPELLATE DISTRICT**

**DIVISION TWO**

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| A.B.,<br><br>Petitioner,<br><br>v.<br><br>THE SUPERIOR COURT OF SAN BERNARDINO COUNTY,<br><br>Respondent;<br><br>SAN BERNARDINO COUNTY CHILDREN AND FAMILY SERVICES,<br><br>Real Party in Interest. | E058813<br><br>(Super.Ct.Nos. J242950, J242951 )<br><br>OPINION |

ORIGINAL PROCEEDINGS; petition for extraordinary writ. Cheryl Kersey, Judge. Petition denied.

John N. Vega for Petitioner.

No appearance for Respondent.

Jean-Rene Basle, County Counsel and Kristina M. Robb, Deputy County Counsel, for Real Party in Interest.

Petitioner is the father (father) of two children, M.B and B.B (the children), who turned 13 and 10 years of age shortly after the order at issue here. Father challenges the juvenile court's order of May 20, 2013, terminating his reunification services and setting a hearing under Welfare and Institutions Code section 366.26[1] for September 17, 2013. Father argues the juvenile court erred when it determined San Bernardino County Children and Family Services (CFS) provided him with reasonable services, specifically family therapy and visitation. Father seeks an immediate stay of the order terminating reunification services. As discussed below, we deny both the request for stay and the petition itself.

## FACTS AND PROCEDURE

Detention

In February of 2012, witnesses called police after they saw the children's mother (mother)[2] kicking, slapping and beating them in a parking lot after she returned to the car from a pizza restaurant. The police went to the family home, arrested mother and brought the children to the police station. M.B., who was 11 years old at the time, told the responding social worker that she and her 8-year-old brother B.B. waited in the car while their mother went to pick up a pizza. B.B. took the keys out of the ignition and they were misplaced. When mother returned she said "Where the f____ are my keys?"

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[1] All section references are to the Welfare and Institutions Code unless otherwise indicated.

[2] Mother is not a party to this writ petition. She is mentioned only where necessary.

Mother kicked M.B. in the stomach twice and kicked B.B. in the groin. She slapped both children in the face and punched B.B. in the head twice. B.B. got a bloody nose and could not see out of his left eye for five minutes. M.B. complained of pain in her stomach. After the keys were found, mother told the children "wait till we get home and inside, you guys will be black and blue. Will not be able to sit, walk or see." The abuse was caught on a security camera, which the police report describes as showing mother "kicking both [children]. [B.B.] is observed falling to the ground, rolls into a fetal position, and grabs his groin with his hands. It is apparent [B.B.] is in pain. [Mother] can also be seen slapping both children repeatedly as they were searching the car for her keys."

The children told the social worker that both mother and father beat them regularly, and that the parents fought a lot, including both verbal and physical fights. M.B. stated that father hits her "all over," and that as recently as three months prior father "was pounding me and hitting me over and over and over and over." B.B. said father hit him with a belt, or a shoe or whatever is around. Father was also arrested. The children were detained that day and placed in foster care.

CFS filed a section 300 petition on February 17, 2012. CFS alleged the children had suffered serious physical harm (subd. (a)) from the beatings and serious emotional damage (subd. (c)) from the domestic violence, and that both parents failed to protect the children (subd. (b)) because they had a history of neglect, including a previous dependency case, mother had a history of substance abuse and father failed to protect the

children from mother's behavior, and both parents failed to protect the children from physical abuse by the other parent.

At the detention hearing held on February 21, 2012, the court found a prima facie case for detention.

Jurisdiction and Disposition

In the report prepared for the jurisdiction and disposition hearing, CFS recommended the parents not receive reunification services. The social worker reported an interview with M.B. in which M.B. stated her parents had hit her consistently since she was a little girl, and that she did not want to see her parents at that time. M.B. appeared to be very angry. In an interview with B.B., B.B. described several specific instances in which mother severely beat both himself and M.B. "It's scary. We get hit so many times. So we just end up going to our rooms and staying there for five hours." When asked individually where they wanted to live, each child said they wanted to go to Arizona to live with their maternal grandparents.

At the jurisdiction and disposition hearing set for March 13, 2012, each parent asked for a contested hearing as to both issues. The social worker reported that at the first of two scheduled visits, one of the parents told the children not to talk to anyone about the physical abuse, so the social worker cancelled the second visit. The court ordered supervised visits to continue, but ordered the parents not to discuss anything about the case with the children, including their future placement.

On May 24, 2012, both parents submitted as to jurisdiction. The juvenile court found true each of the allegations and ordered reunification services for the parents. The

children were ordered placed with the maternal great aunt (caregiver).[3] Supervised visits were to be once per week. The court ordered the caretaker not to say anything negative about the parents to the children. At the parents' request, the court set a contested hearing as to placement. This contested hearing was held on June 26, 2012. The maternal great aunt was confirmed for placement.

In an updated case plan, dated June 19, 2012, the parents were to participate in domestic violence/anger management and parenting education programs, and in counseling to address the issues that led to the dependency.

Father's Request for Increased Visitation

On August 28, 2012, CFS submitted a packet to the juvenile court reporting on father's positive progress in his case plan and requesting unsupervised visits with father, possibly progressing to overnight visits. Mother was not to be present for other than supervised visits. On September 4, 2012, minors' counsel filed a notice of objection and special hearing on the children's behalf, specifying that the parents continued to threaten the caretaker in open court and that the children were fearful to have unsupervised visits. At the hearing held on September 19, 2012, CFS withdrew the packet and minors' counsel withdrew the objection. Visits were to continue with supervision.

[3] The social worker reports often refer to the plural "caregivers." This appears to be the maternal great aunt and her husband. Various other maternal family members attended hearings, including mother's uncle, nephew, sister, brother-in-law, and stepfather.

Six-Month Review

In the six-month status review report filed November 19, 2012, CFS recommended the children remain in their placement and that reunification services to the parents continue. The parents were participating in services and had decided to live apart because they could not get along. Both parents expressed that they did not believe they could reunify with the children while the children lived with the caregiver because of the longstanding discord between the parents and the maternal side of the family. The parents believed the maternal relatives wanted to keep them away from the children because of their history.

Regarding visitation, the children had previously told the social worker that they would be comfortable having unsupervised visits with their father, as long as their mother did not attend. This appears to be why the social worker submitted the packet requesting unsupervised visits in August 2012. The children had changed their minds as of the September 19 hearing on the packet and objection. Between that hearing and the six-month review report, there were no visits. This is because the children and caretaker called the social worker each week to state they did not want visits. In separate conversations, each child told the social worker that they were afraid their parents would not change and they would be hit again. Both children wanted to eventually live with their maternal grandparents in Arizona. The social worker recommended conjoint family counseling to overcome these issues.

The six-month review hearing was held on November 26, 2012. After an in-chambers conference, the children agreed to participate in visitation. The supervised visits were to be once per week at the CFS office from 4:00 to 5:00 p.m. with mother and 5:00 to 6:00 p.m. with father. The caregiver was to transport the children to the visits. At this hearing the court apparently made its initial order for conjoint counseling.[4]

On December 21, 2012, CFS filed an addendum report for the further six-month review hearing on December 31, 2012. The report's purpose was to "update the court on family visitations." The parents each had their separate, back-to-back visits with the children on November 28, and on December 5, 12 and 19. Father's first two visits were generally positive, while mother was quite volatile, especially when M.B. did not want to visit with her. B.B. interacted positively with father during these first two visits, while M.B. eventually interacted with father and B.B. after some coaxing by father. On December 5, father complained to the social worker that he did not like having the caregiver waiting in the lobby while he waited for his visit, because she gave him dirty looks. On December 12, father told the social worker that he had a restraining order against the caregiver, but never produced one. Also on that date father became angry when M.B. did not want to participate in the visit and when the caregiver "appeared to be laughing." As M.B. and the caregiver were walking down the hallway away from the

[4] This order is not reflected in the minute order for November 26, 2012, nor does the record contain a record transcript for that date. However, the minute order indicates the court held an in-chambers conference with the children and all counsel and at the December 31, 2012 hearing father's counsel referred to the court's November 26 order for conjoint counseling.

visitation room, father yelled about how the caregiver was interfering with the reunification process, and raised his middle finger at the caregiver. The visit ended at that point, at about 5:20 p.m., because neither child wanted to continue the visit. The December 19 visit with father went well. Both children interacted positively with father for nearly the entire visit, despite a very negative visit with mother in the previous hour. Toward the end of the visit B.B. appeared to be talking back to father. Father spoke to B.B. calmly about being respectful, but B.B. appeared to find this funny and smiled throughout father's comments. At the end of the report, the social worker commented that the visits were deteriorating and that the children "know how to get a reaction from their parents that are not positive and the parents don't seem to know how to control their tempers." The social worker also stated that the family urgently needed to get into family counseling but the counseling facility did not have a licensed therapist available after school hours.

On December 27, 2012, CFS filed an "Additional Information Report" to the juvenile court, which asked that mother's visits with the children be suspended until she had "drug tested regularly, progressed in her services, is not hostile towards her children, and does not blame them for her situation." Mother's visit with the children on December 26 had to be cut short after she yelled at the children and threatened to spit on them. The caregiver called police "as she believes the parents have followed her to her home in the past."

A further six-month hearing was held on December 31, 2012. Various maternal family members attended hearing this hearing, including mother's uncle, nephew, sister,

brother-in-law, and stepfather. At the parents' request, the court ordered these relatives to wait in the hallway during the hearing, except for the caregivers. Father's counsel and mother's counsel each complained that conjoint counseling had not yet been arranged and that the caregivers were empowering the children to refuse to visit, and to not cooperate during visits. At the conclusion of the hearing, the court ordered CFS to ensure that the family began conjoint counseling no later than January 18, and that the counseling sessions initially be conducted in lieu of visits.

Twelve-Month Review and Father's JV-180

In the status review report filed April 22, 2013, CFS reported that the family had attended five conjoint counseling sessions, the parents had one session together, the children had one session together, and each of the four had an individual session. During two conjoint sessions in February, the family was laughing with each other and making jokes, but during the remainder of the sessions the family interacted negatively and acted aggressively toward each other. The therapist terminated the family sessions after the conjoint session on March 26, 2013, because she believed family counseling was more detrimental than beneficial. The therapist reported that mother was unable to control her impulses and both parents maintained that the abuse was a "lie." The children in turn viewed the parents negatively because they did not believe their parents could change. The therapist opined that the parents did not recognize there was a problem and that their relationship with the children was damaged before CFS became involved. The last session on March 26 ended early after the parents and children continued to yell at each

other and ignore the therapist's instructions. Although Mother was the most volatile, father also yelled at the children and the therapist, causing the therapist to call 911.

On April 17, 2013, father filed a form JV-180 Request to Change Court Order. Father challenged the juvenile court's order of December 31, 2012, in which it continued the children in the care of their great aunt. Father asked for a new order placing the children with their paternal grandmother and an order continuing reunification services. Father argued these changes would benefit the children because family reunification was impossible with the current placement. In his supporting declaration, father stated the maternal family disliked him because of his ethnicity and because they wrongly believed he abused his wife. Father stated the caretakers continued to violate the court's orders that they not influence the children against him. Father used as an example the children's recent knowledge that he and mother had previously been divorced, and that father had been arrested, in that they could only have found out these negative facts from mother's family. Father stated his belief that, when he was on the verge of obtaining unsupervised visits with the children in the summer of 2012, the maternal family encouraged the children to refuse visits.

CFS filed its response to the JV-180 on May 7, 2013, asking the juvenile court to deny the petition. The paternal grandmother, with whom father asked the children to be placed, had died. In addition, the social worker concluded that there was no need to remove the children from their current placement and put them in non-relative foster care because the main obstacle to reunification was the parents' own anger and their inability to place the children's needs above their own dislike of the caregivers. Finally, the social

worker stated that the caregivers had provided for the children's physical and emotional needs and that there was no need to remove the children.

On May 17, CFS filed a document entitled "Additional Information to the Court" in which it recommended that both visits and reunification services be terminated as to mother but continued as to father. CFS described additional volatile visits with mother, her refusal to drug test throughout the dependency, and refusal to consent to family counseling with a different provider unless she could choose the provider. CFS concluded that "visits with the mother have become detrimental to the emotional health of their children."

The 12-month review hearing and the hearing on father's section 388 petition was held on May 20, 2013. Mother's counsel asked that the family members in the back of the courtroom be asked to step outside during the hearing, and father agreed, but the juvenile court allowed them to stay "so they can be here as support" for the children. After hearing argument regarding whether father had established a prima facie case under section 388 to merit a hearing on his petition, the court ruled that father had not established changed circumstances or that a change of placement would be in the children's best interest, so the court denied the petition without a hearing.

At the 12-month review portion of the hearing, Mother testified on her own behalf and was cross-examined by the children's attorney and county counsel. Father testified that he had completed all of his services, including anger management and individual counseling, in 2012. The individual counseling was with the therapist who later provided the conjoint family counseling. Father testified that he had been employed throughout

the dependency in a customer service capacity, but declined to specify where because he did not want the maternal relatives present in the courtroom to know where he worked. Father testified that he found it to be a problem for reunification that his children resided with maternal relatives when that side of the family no longer spoke with mother, nor with him. Father agreed with mother's testimony that the family therapist did not intervene when the children, especially M.B., were disrespectful, aggressive and out of hand during conjoint counseling, especially toward mother. Father testified that, during these sessions, he would attempt to remain quiet and try to just get through the session. Father testified that, after the conjoint counseling was cancelled, he had several visits with just himself and the children, and that they all went well. However, the last two visits also included mother, and they did not go as well. Father testified that he would like to have conjoint therapy with just the children, without mother present, because the sessions that had gone well were the early ones in which he had taken the lead in interacting with the children. Father asked the court to grant him visits with the children outside of therapy. He stated that his relationship with B.B. was better than that with M.B., and that the last time they had discussed visitation, B.B. wanted unsupervised visits with father, but M.B. wanted to first speak with her attorney. Father understood that if he were to get the children back, he would not be able to reunite with mother. Under questioning by the court, father stated he had permanently separated from mother in December 2012. Under cross-examination by minor's counsel, and asked whether he planned to "never have a relationship" with mother again if the kids were to be returned to him, father answered "Well, you have to be realistic, we do have children together, so

if there would have to be some type of communication between her and I." Father testified that, after the children had previously been removed by CFS in 2006, the case was closed and children were had been returned to his care in 2007 on the condition that mother have no contact with the children. In about 2008, the parents reunited and mother moved back into the home. Father did not believe mother was a safety risk to the children. Father admitted that he and mother fought a lot, and that he knew mother spanked the children when he was not home, although he disagreed with mother's actions. Father denied hitting the children or using a belt on them. Father believed he would be able to reunite with his children within the next three months if he was given family counseling with them. Under cross-examination by county counsel, father testified that he believed the turbulent conjoint counseling sessions were caused by friction between mother and M.B. Father admitted to having yelled in M.B.'s face during a session "when she got disrespectful, raised her voice at me." But father denied the therapist's report that at the last session he stood up and towered over the therapist in a menacing way. Father admitted to getting upset during a counseling session when M.B. brought up that father was arrested at age 21, a fact that father had never shared with the children, and which he believed the maternal relatives had told the children. Father did not believe he needed to take additional anger management classes and that his reaction to M.B.'s disrespectful comments in conjoint therapy was "not anger, that's a normal reaction . . . ."

Father's counsel called the social worker to the stand. The social worker testified that her recommendation was to terminate reunification services and visitation for

mother, but to continue them for father. The social worker observed that the visits with the children are better when just father is visiting with them rather than along with mother. The social worker agreed that the four or five conjoint counseling sessions had not been enough to address the family's issues. On cross-examination by the children's counsel, the social worker confirmed the conclusions in the most recent status review report that the children had been emotionally damaged by the parents' actions, but that neither parent seemed to understand that. The social worker testified that father needed additional anger management classes and individual therapy, and confirmed that the family therapy sessions had been terminated by the therapist, not by CFS.

At the conclusion of the hearing, the children's counsel asked that visits and reunification services be terminated as to both parents. County counsel submitted on the recommendation to terminate as to mother and continue services and visits as to father. The juvenile court found that reasonable services had been provided and ordered reunification services terminated as to both parents, but allowed father to have supervised weekly visits pending the section 366.26 hearing set for September 17, 2013. The court reasoned that father had not demonstrated a willingness to place his children's welfare above his relationship with his wife, and had not learned from previous experience that the children were not safe around mother. Father timely filed his Notice of Intent to File Writ Petition.

## DISCUSSION

Father argues the trial court erred when it found CFS had provided him with reasonable services, specifically conjoint family counseling and visitation. As discussed below, we disagree.

Before initiating proceedings to terminate parental rights, the juvenile court must find by clear and convincing evidence that CFS provided reasonable reunification services. (*In re Maria S.* (2000) 82 Cal.App.4th 1032, 1039, quoting *Robin V. v. Superior Court* (1995) 33 Cal.App.4th 1158, 1164-1165.)

We review a juvenile court's finding that an agency offered or provided reasonable reunification services for substantial evidence. (*Katie V. v. Superior Court* (2005) 130 Cal.App.4th 586, 598 (*Katie V.*).) "In reviewing the reasonableness of the services provided, this court must view the evidence in a light most favorable to the respondent. We must indulge in all legitimate and reasonable inferences to uphold the verdict. If there is substantial evidence supporting the judgment, our duty ends and the judgment must not be disturbed." (*In re Misako R.* (1991) 2 Cal.App.4th 538, 545.)

"'[T]he focus of reunification services is to remedy those problems which led to the removal of the children.' [Citation.] A reunification plan must be tailored to the particular individual and family, addressing the unique facts of that family. [Citation.] A social services agency is required to make a good faith effort to address the parent's problems through services, to maintain reasonable contact with the parent during the course of the plan, and to make reasonable efforts to assist the parent in areas where compliance proves difficult. [Citation.] However, in most cases more services might

have been provided and the services provided are often imperfect. [Citation.] 'The standard is not whether the services provided were the best that might be provided in an ideal world, but whether the services were reasonable under the circumstances.' [Citation.]" (*Katie V., supra,* 130 Cal.App.4th at pp. 598-599.)

Family Counseling

Here, there was a delay of nearly two months between the November 26, 2012 hearing at which it appears the juvenile court first ordered conjoint family counseling (see fn. 4), and the first session on January 16, 2013. We do not find this to be a long enough delay to negate the juvenile court's finding of reasonable services, for the following reasons. First, CFS provided evidence that it had made a good-faith effort to get the family into conjoint counseling within a reasonable amount of time. CFS initially obtained an appointment for the family within 30 days of the November 26 order, but it had to be cancelled when CFS determined the therapist was not licensed. The social worker worked diligently to re-submitted the referral and was able to get the family into conjoint counseling well before another 30 days had passed. This contrasts with the cases cited in father's petition, in which the necessary services were not provided at all by the time of the challenged ruling. In *Tracy J. v. Superior Court* (2012) 202 Cal.App.4th 1415 (*Tracy J.)* the juvenile court ordered numerous services to developmentally disabled parents to help them raise their asthmatic child, but the services were never provided over the course of more than one year. In *In re Alvin R.* (2003) 108 Cal.App.4th 962, the child welfare agency failed to arrange conjoint family counseling in the eight months between the court's order for family counseling and the review hearing at which it found

reasonable services had been provided. In addition, the child welfare agency submitted no evidence that it had made a good faith effort to overcome the many scheduling challenges, in stark contrast to the current case.

Second, the parents' own actions caused the conjoint counseling services to be terminated by the therapist after just over two months, and nearly two months before the 12-month review hearing. Thus, the parents, including father, played a large part in any deficiency in the reunification services. As discussed above, the last few conjoint sessions were volatile and unproductive, in large part because both parents had trouble controlling their tempers when their children misbehaved or were disrespectful. While we acknowledge that the interactions between mother and M.M. were the most volatile, the record does indicate that father acted inappropriately as well. For example, during the last, ill-fated conjoint session on March 26, 2013, father responded to comments by B.B. "in angry outburst, loud speech, and yelling at both children . . . then got into [M.B.]'s face and yelled in her face . . . ." After the session was ended early, the therapist invited the parents into her office for a discussion, during which father "towered over" the seated therapist after having been asked to sit down.

To summarize, CFS worked hard to arrange the ordered conjoint counseling within two months despite scheduling obstacles, and the parents were not able to take advantage of the allegedly unreasonable services because of their own anger issues. For these reasons, we affirm the juvenile court's finding that father was offered reasonable reunification services.

Visitation

Father argues the visitation services provided to him were unreasonably insufficient because: 1) in September 2012, CFS allowed the children to veto the planned progression of his visits to unsupervised; and 2) CFS counted the family counseling sessions in January, February and March 2013 as visitation.

"Visitation is an essential component of a reunification plan. [Citation] To promote reunification, visitation must be as frequent as possible, consistent with the well-being of the child. [Citations.]" (*Tracy J., supra,* 202 Cal.App.4th at p. 1426.) Here, there is substantial evidence from which the juvenile court could conclude that CFS provided reasonable visitation services, despite withdrawing its initial request to expand father's visits to unsupervised. We base this conclusion on the contents of the Notice of Objection and Special Hearing filed by the children's counsel on September 4, 2012. The basis of this objection was stated as follows: "Case result of severe physical abuse; parents not benefitted from services – continue to threaten caretaker in open court. Children are fearful to be left unsupervised." The evidence support's CFS's action in withdrawing the petition, given that: 1) visitation must be conducted "consistent with the well-being of the child"; and 2) the statement from the children's own counsel that they were "fearful" to be alone with father, especially given the severe abuse to which they had been subjected, the fact that mother was still living with father (though father told CFS that mother was "in the process" of moving out) and father's previous history in allowing mother back into the home in 2008 after the previous dependency despite the court's orders that he not do so.

Regarding having the conjoint family therapy sessions count as father's weekly visit, the court commented during the December 31, 2012 hearing that "the current visits are really adverse to the idea of reunification because if we allow the visits to continue like they have been, it appears with each visit we get farther and farther away from reunifying instead of the other direction . . . ." This was not an unreasonable conclusion based on the mutual rancor that accompanied some of father's visits in December. Also, in hindsight this was not an unreasonable conclusion, and certainly not an unreasonable restriction on visitation, given the eventual total breakdown in the parents' interaction with the children even during family therapy and in the presence of the therapist.

For these reasons, substantial evidence supports the juvenile court's conclusion that father was provided reasonable services.

## DISPOSITION

Both the petition and the request to stay the order terminating reunification services are denied.

NOT TO BE PUBLISHED IN OFFICIAL REPORTS

RAMIREZ
P. J.

We concur:

KING
J.

CODRINGTON
J.